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UNCLAS SECTION 01 OF 02 GENEVA 002085

SIPDIS

STATE FOR IO/SHA, DRL/MLA

E.O. 12958: N/A

TAGS: PHUM UNHRC

SUBJECT: SR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY  
EXECUTIONS REQUESTS INFORMATION ON HAITHAM AL-YEMENI

1. Mission received the following communication from Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, regarding the death of Haitham al-Yemeni. This communication has been forwarded to IO/SHA via e-mail and is number 26 on the Geneva 2005 Communications Log.

2. Begin text of letter:

REFERENCE: AL G/SO 214 (33-23)  
USA 8/2005

26 August 2005

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Commission on Human Rights resolution 2004/37.

I would like to bring to your Excellency's attention information I have received according to which Haitham al-Yemeni, an alleged al-Qaeda senior figure, was killed on the Pakistan-Afghanistan border on or around 10 May 2005 by a missile fired by an un-manned aerial drone operated by the US Central Intelligence Agency. Mr. al-Yemeni had reportedly been under surveillance for more than a week by US intelligence and military personnel. Reports indicate that the Predator drone, operated from a secret base hundreds of kilometers from the target, located and fired on him in Toorikhel, Pakistan, an area where Pakistani forces had allegedly been looking for al-Qaeda leader, Osama Bin Laden. It is my understanding that the CIA is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks.

According to the information received, although Mr. al-Yemeni was not listed by that name neither in the FBI's, nor in Pakistan's, "most wanted" list, the active surveillance of his activities would suggest that he was playing an important role inside the al-Qaeda organization. It has been suggested that those undertaking the surveillance were hoping that he would lead them to Osama bin Laden. However, after Abu Faraj al-Libbi, another suspected al-Qaeda leader, was arrested by Pakistani authorities a month before, it is reported that a decision was taken to kill Mr. al-Yemeni for fear that he would go into hiding and thus be lost track of. My understanding is that the CIA reportedly refused to comment on the situation. Similarly, Sheik Rashid Ahmed, Pakistan's Information Minister denied that any such incident had ever happened near the Pakistan-Afghanistan border.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am fully aware of the stance taken by your Government in correspondence with my predecessor with respect to the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (I refer to your Government's letters dated 22 April 2003 and 8 April 2004). As I have explained in my Report to the 61st Commission on Human Rights, however, both the practice of the General Assembly and of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45).

In the light of these considerations, I would reiterate my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). I would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See Lopez v. Uruguay, communication No.52/1979, CCRP/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, I wish to stress that, while Governments have a responsibility to protect their citizens against the excesses of non-State actors or other entities, efforts to eradicate terrorism must be undertaken within a framework clearly governed by international human rights law as well as by international humanitarian law. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. What rules of international law does your Excellency's Government consider to govern this incident? If your Excellency's Government considers the incident to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.
2. What procedural safeguards, if any, were employed to ensure that this killing complied with international law?
3. On what basis was it decided to kill, rather than capture, Haitham al-Yemeni?
4. Did the government of Pakistan consent to the killing of Haitham al-Yemeni?

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for your cooperation and your observations. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration. Please accept, Excellency, the assurances of my highest consideration.

Philip Alston  
Special Rapporteur on extrajudicial, summary or arbitrary executions

End text of letter.

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